



UNITED STATES PATENT AND TRADEMARK OFFICE

Cur

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,448	12/20/2005	Shimon Weiss	58086-226455	8178
26694	7590	11/30/2007		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER EVANS, FANNIE L	
			ART UNIT 2877	PAPER NUMBER
			MAIL DATE 11/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,448

Applicant(s)

WEISS ET AL.

Examiner

F. L. Evans

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 20, 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>122005.053007.091107</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Preliminary Amendment

Receipt is acknowledged of the preliminary amendment filed on February 1, 2007. The amendment has been placed of record in the file.

The Drawings

The drawings filed on December 20, 2005 are informal. Formal drawings in compliance with 37 CFR 1.84 are required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The Information Disclosure Statements

The prior art cited in the information disclosure statements filed on December 20, 2005, May 30, 2007 and September 11, 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis

Art Unit: 2877

for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-38 are rejected under 35 U.S.C. § 102(a) as being clearly anticipated by Rigler et al (DE 10210737 A1), cited by applicant.

With respect to claims 1-20, Rigler et al disclose a method for analyzing a sample to determine information about one or more molecules that may be present in said sample (paragraph [0001]), said method comprising the steps of: providing a sample in a detection zone wherein said sample comprises at least one molecule that is labeled with at least one fluorophore to provide a labeled molecule wherein said fluorophore remains within said detection zone for a detection period (paragraph [0005]), said fluorophore being capable of emitting a signal wherein said signal has properties comprising wavelength, intensity, lifetime, and polarization; exposing said labeled molecule to radiation within said detection zone wherein said radiation has properties comprising wavelength, intensity, lifetime and polarization; modulating at least one of the properties of said radiation by changing said at least one property from an initial state to at least one subsequent state and then changing said at least one property back from said at least one subsequent state to said initial state (paragraphs [0007], [0008], [0048] and Fig. 2) wherein said modulating of said one or more properties occurs over a modulation period and wherein said modulation period is equal to or less than said detection period (paragraph [0009]); measuring at least one of said properties of said signal emitted by said fluorophore while said fluorophore is located within said detection zone to obtain an emission profile; and using said emission profile to determine information about said one or more molecules that may be present in said sample (paragraph [0016]). The at least one labeled molecule comprises one or more molecule selected from the group consisting of nucleic acids, proteins, nucleotides, peptides, fluorophore-chelator conjugates, peptide nucleic acids, lipids, sugars, and hybrids thereof (paragraph [0019])

With respect to claims 21-38, Rigler et al disclose a method for analyzing a sample to determine information about one or more molecules that may be present in said sample (paragraph [0001]), said method comprising the steps of: providing a sample in a detection zone wherein said sample comprises at least one molecule that is labeled with at least one fluorophore to provide a labeled molecule (paragraph [0005]), said fluorophore being capable of emitting a signal wherein said signal has properties comprising wavelength, intensity, lifetime and polarization and wherein said one or more molecules undergo a change in state between a first molecular state and a second molecular state during a period of time while said molecule(s) are in said detection zone (paragraph [0009]); exposing said labeled molecule to radiation within said detection zone wherein said radiation has properties comprising wavelength, intensity, lifetime and polarization; modulating at least one of the properties of said radiation by changing said at least one property from an initial state to at least one subsequent state and then changing said at least one property back from said at least one subsequent state to said initial state (paragraphs [0007], [0008], [0048] and Fig. 2) wherein said modulating of said one or more properties occurs over a modulation period and wherein said modulation period is equal to or less than the period of time during which said molecule changes from said first molecular state to said second molecular state (paragraph [0009]); measuring at least one of said properties of said signal emitted by said fluorophore while said fluorophore is located within said detection zone to obtain an emission profile; and using said emission profile to determine information about said change in state of said one or more molecules that may be present in said sample (paragraph [0016]). The at least one labeled molecule comprises one or more molecule selected from the group consisting of nucleic acids, proteins, nucleotides, peptides, fluorophore-chelator conjugates, peptide nucleic acids, lipids, sugars, and hybrids thereof (paragraph [0019])

Applicant's attention is directed to Rigler et al in its entirety with particular attention directed to paragraphs [0001]-[0010], [0016], [0018], [0019], [0025], [0028], [0037], [0047]-[0055].

Art Unit: 2877

Additional Prior Art

Rigler et al (US 7,223,985 B2) appears to be an English language equivalent of Rigler et al (DE 10210737 A1), applied in the rejection of the claims.

Fax/Telephone Numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (571) 272-2414.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**F. L. EVANS
PRIMARY EXAMINER
ART UNIT 2877**

fle
November 25, 2007